

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 3, 2006

IN RE:

PETITION OF DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATIONS COMPANY,
FOR ARBITRATION OF INTERCONNECTION
AGREEMENT AMENDMENT WITH BELL SOUTH

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DOCKET NO.
04-00186

ORDER GRANTING RECONSIDERATION

This matter came before Director Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 22, 2005 for consideration of *Covad Communication Company's Petition for Reconsideration* ("Petition for Reconsideration") filed by DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad"). Covad filed its *Petition* on August 4, 2005, seeking reconsideration of the Authority's July 20, 2005 *Order*.

Background

On December 4, 2003, BellSouth provided Covad with proposed amendments to the Parties' Interconnection Agreement ("Agreement"), which were related to the *Triennial Review Order* ("TRO")¹ issued by the Federal Communications Commission ("FCC"), pursuant to the

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos 01-338, 96-98, 98-147, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003), *corrected by Errata*, 18 FCC Rcd 19020 (2003), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v FCC*, 359 F 3d 554 (D C Cir. 2004), *cert denied*, 125 S Ct 313, 316, 345 (2004) ("Triennial Review Order" or "TRO")

Agreement's change of law provision. Covad asserted that some of the proposed amendments were not related to the *TRO* and further, that some were affected by the decision of the United States Court of Appeals, District of Columbia Circuit in *USTA II*.² Covad maintained that the only issue in this docket that was not affected by *USTA II* is the line sharing issue.

The Parties filed a joint letter with the Hearing Officer³ on August 12, 2004 reporting that they had resolved five of the original issues of the *Petition* and were discussing four other issues. BellSouth and Covad also requested that the Authority or Hearing Officer order the Parties to file legal briefs on or before September 3, 2004 addressing the following limited issue: *Is BellSouth obligated to provide Covad access to line sharing after October 2004?*⁴ Pending a decision on the foregoing question, the Parties agreed to hold all other issues and outstanding motions in abeyance, based on the assumption that the determination of that issue would facilitate an expedited decision in the matter. At the August 30, 2004 Authority Conference, the panel voted to direct the Hearing Officer to set September 3, 2004 as the briefing schedule for the line sharing issue and to hold the remainder of the issues in abeyance. As ordered, the Parties submitted briefs on September 3, 2004.⁵

At the regularly scheduled Authority Conference held on September 27, 2004, the panel found that BellSouth is obligated to continue providing line sharing after October 2004 pursuant to 47 U.S.C. § 251(c)(3) as outlined in the FCC's *TRO* and 47 C.F.R. § 51.319.⁶

² *United States Telecom Ass'n v FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004) ("*USTA II*")

³ During a regularly scheduled Authority Conference held on August 9, 2004, the panel appointed General Counsel or his designee as Hearing Officer for the purpose of determining whether the matter should proceed as an arbitration or a dispute

⁴ See Letter Advising the TRA that Covad and BellSouth Have Met and Discussed the Issues in this Case, p. 1 (August 12, 2004)

⁵ See Order Establishing Briefing Schedule (August 31, 2004)

⁶ See Order (July 20, 2005)

Petition for Reconsideration

On August 4, 2005, Covad filed a *Petition for Reconsideration* requesting that the Authority reconsider its decision that BellSouth shall continue to provide line sharing after October 2004 pursuant to 47 U.S.C. § 251(c)(3).⁷ Covad states that specifically, it seeks a ruling from the Authority as to whether BellSouth has an obligation under Section 271 of the Telecommunications Act of 1996 (the “Act”) to provide line sharing after October 2004.⁸ Covad asserts that the question of BellSouth’s Section 271 obligations was properly before the Authority and briefed by the parties, and the Authority has an obligation pursuant to Section 252 of the Act to resolve all open issues. According to Covad, the Authority only addressed BellSouth’s Section 251 obligations and made no decision on its Section 271 obligations. Covad maintains that the Authority should find that BellSouth has a Section 271 obligation to provide line sharing and the Authority should establish a just and reasonable rate for line sharing.⁹

BellSouth’s Response

On August 12, 2005, BellSouth filed *BellSouth Telecommunications, Inc.’s Response in Opposition to Covad’s Motion for Reconsideration* (“*BellSouth’s Response*”). It maintained that the Authority correctly answered the question before it by finding that BellSouth is obligated to make line sharing available to Covad pursuant to the FCC’s transition plan alone.¹⁰ BellSouth asserts that “the Authority, having been fully apprised of both parties’ arguments, correctly determined that BellSouth’s line sharing obligation is limited to the terms of the FCC’s transition plan. Covad is entitled to nothing more, and its *Motion for Reconsideration* should be denied.”¹¹

⁷ *Id*

⁸ *Petition for Reconsideration*, p 1

⁹ *Id* at 11

¹⁰ *BellSouth’s Response*, p 1 (August 12, 2005)

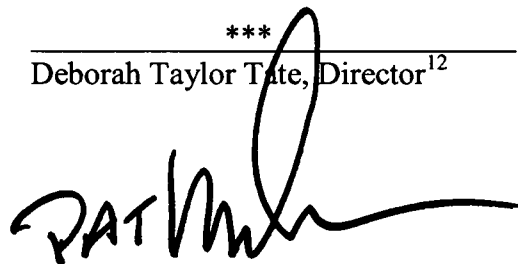
¹¹ *Id* at 5

August 22, 2005 Authority Conference


At a regularly scheduled Authority Conference held on August 22, 2005, a majority of the panel voted to grant Covad's *Petition for Reconsideration* and to address the merits of the *Petition for Reconsideration* at a later date.

IT IS SO ORDERED.

Deborah Taylor Tate, Director¹²



Pat Miller, Director



Sara Kyle, Director

¹² Director Deborah Taylor Tate did not vote with the majority